

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Stephen J. Brown
Serial No.: 10/605,229
Title: NETWORKED REMOTE PATIENT MONITORING WITH
HANDHELD DEVICES
Filed: September 16, 2003
Attorney Docket No.: 7553.00098 / 03-0930
Examiner: Raj, R.
Art Unit: 3686

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal by an attorney either of record or acting under 37 CFR 1.34.

REMARKS

Review is requested for the following reasons:

The Examiner improperly dissected the claimed invention into discrete elements and then evaluated the elements in isolation. Consider the rejection of claim 1 on page 3 of the April 6, 2010 Final Office Action as an example. The rejection dissected claim 1 into at least the following fragments (i) remotely located, (ii) on a first communication channel, (iii) on a second communication channel, (iv) to receive the health-related information and (v) for collecting the health-related data. The dissection of the claim into these tiny fragments is prohibited by MPEP 2106. The claims as a whole were not considered. Therefore, the Examiner used an improper technique to form the rejection.

The Examiner improperly used the claims as a template to assemble the reference elements. Assuming, *arguendo*, that all of the claim fragments are found in Allen and Fu as alleged (for which Applicant's representative does not necessarily agree), the Examiner did not provide any particular findings of fact as to why a skilled artisan, **with no knowledge of the claimed invention**, would have selected these components for combination in the manner claimed. For example, the Final Office Action asserted that Allen teaches several claim 1 features that belong to the claimed central server. However, the Final Office Action also stated that Allen does not teach the central server. The Examiner did not provide an explanation how Allen could teach features of a computer that it does not disclose. No finding of fact were provided why one of

ordinary skill in the art would apply the teachings of Allen to the central unit 20 of Fu when Allen does not teach any computer similar to the central unit 20 of Fu. When this approach was traversed, the Examiner avoided the issue by asserting that the rejections were based on a combination of the references instead of providing the required findings of fact (see Final Office Action page 22, paragraphs 13-15). In the absence of any other explanation, the Examiner improperly used the claims as guides to cut and paste pieces of Allen onto the central unit 20 of Fu to arrive at the claimed central server.

The Examiner failed to clearly explain the pertinence of each reference. For example, the Examiner used the same phrase "see at least Allen Column:1 Lines: 50-68 FIG: 4 Items: 10, 100-114 & related text" to reject many different claimed limitations. However, the Examiner did not explain how the entire FIG. 4 of Allen performed all of the rejected claimed limitations. No explanations were provided regarding which parts of the "& related text" were used as the basis for the assertions. Applicant's representative should not have to guess at what the Examiner is thinking. The rationale for the rejection should be clearly presented for all to read. The ambiguity of the rejections is a violation of 37 CFR. 1.104.

The Examiner made conflicting statements in mapping the elements of Allen to the claims. For example, page 3 of the Final Office Action asserted that the monitor unit 10 of Allen teaches the claimed microprocessor device while page 22 asserted that the

same monitor unit 10 teaches the claimed data management unit. Both assertions cannot be correct at the same time as both claimed elements are within the scope of claim 8. Furthermore, page 3 of the Final Office Action asserted that the computer 102 of Allen teaches the claimed health care professional computer, yet page 23 asserted that the same computer 102 teaches the claimed personal computer. Again, both assertions cannot be correct at the same time as both claimed elements are within the scope of claim 11. The claims include more elements than the proposed combinations account for.

Applicant's representative believes that clear errors exist in the Examiner's rejections. The Examiner has (i) improperly dissected the claims, (ii) improperly used the claims as templates to assemble the reference elements and (iii) failed to clearly explain the pertinence of each reference. The Examiner has not shown that the proposed combinations includes both the claimed (i) microprocessor device and (ii) data management unit. Furthermore, the Examiner has not shown that the proposed combination includes both the claimed (i) health care professional computer and (ii) personal computer.

If the Pre-Appeal Board members find some way to interpret the claims and/or references in a way different than characterized above, Applicant's representative requests that the Board reopen prosecution. Applicant's representative also requests that the Examiner initiate a telephone interview (586-498-0670) in

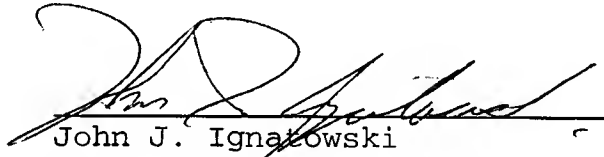
an effort to consider whether a modification to the claims is possible in order to be interpreted as discussed.

The Examiner is respectfully invited to call the Applicant's representative should it be deemed beneficial to further advance prosecution of the application.

If any additional fees are due, please charge Deposit Account No. 50-0541.

Respectfully submitted,

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Dated: August 5, 2010

c/o Sandeep Jaggi
Health Hero Network

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